

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Emergency Communications
by Amateur Radio and Impediments to
Amateur Radio Communications

FCC Docket No. GN-12-91

By W. Lee McVey, P.E. W6EM

To: The Commission

REPLY TO COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE

The following is my Reply to the Comments of the American Radio Relay League (ARRL), with citations from the Comments of R. Boyd, F. Fallon and M. Adams in the above proceeding.

I. Introduction

1. Although generally I concur with its Comments, ARRL makes the bold statement with respect to Reasonable Accommodation that [it] *has worked well in the*

*circumstances in which it applies.*¹ Nothing could be further from the truth, as evidenced by three examples included in Comments filed in this proceeding and likely many others. Dr. R. Boyd was fortunate to have the financial means to “fight city hall,” as it were, and ultimately prevail.² Similarly, Mr. F. Fallon, a former ARRL Senior Official, also had the personal persistence and means to defend himself in a lengthy battle in order to have an effective antenna.³

2. There are likely many more examples where *reasonable accommodation was anything but reasonable*. Even though codified,⁴ that simple fact has been demonstrated, over and over: simply a few words do not beckon *reason or competence* to local government decision making regarding accommodation of amateur antennas. As cited in his additional comments, M.D. Adams tells of an example where a California Appellate Court considered *reasonable* its limitation of an amateur’s operations to VHF/UHF bands only via allowing only a very short rooftop vertical antenna.⁵

II. Existing Federal Preemption Virtually Ignored

3. Local governments and even state courts, in the instance cited above, largely *ignore* existing federal supremacy with respect to regulation of amateur radio antennas.⁶ As such, the amateur operator is forced to either bring suit and expend tens of thousands

¹ ARRL Comments at 50.

² Comments of R. Boyd, M.D.

³ Comments of F. Fallon.

⁴ 47CFR§97.15(b)

⁵ Comments of M. Adams. May 15, 2012.

⁶ McVey Reply Comments to Hams For Action, at 1.

of dollars in legal fees or give up his or her desire to have a reasonable antenna. Perhaps even give up amateur radio or the pursuit of obtaining a license in the first place.

4. Even if existing section 47**CFR**§97.15(b) were to be revised to include preemption of private land use contract restrictions, amateurs would likely still have to, in many cases, endure the frustration in the above examples to obtain permits from local governments. I am led to believe that was not the intent of the Commission in its original findings.⁷ Perhaps an even greater concern being the nightmare of enjoinder of homeowner associations and local governments to both fight the installation of an amateur's reasonable antenna.⁸

5. In similar fashion, residential developers and homeowner associations already widely ignore the mandates of the Over the Air Reception Device (OTARD) Rule⁹ in restrictive covenants. As I cited in my Comments in this proceeding, some developers have been writing into their covenants the *same, non-OTARD-compliant antenna language for the last 16 years*.¹⁰

III. An Effective Process Needed for Removal of Impediments

6. Local governments rely, in part, on their municipal government powers and virtually unlimited legal resources to intimidate or chill amateur radio antenna applicants into *outright submission or abandonment* of their antenna ambitions. Antenna applicants

⁷ Personal Radio Bureau Decision PRB-1.

⁸ See Boyd Comments, page 5.

⁹ 47CFR§1.4000 *et seq.*

¹⁰ McVey Comments, Appendix B at 3.

of limited means; perhaps including children, the physically disabled, disadvantaged minorities and the elderly, would likely *abandon their interests in amateur radio altogether* rather than endure a *long, difficult and costly battle* to install an effective antenna.

7. What is needed is a process that would allow *Commission intervention and resolution of disputes* with respect to what would be a reasonable accommodation and/or a reasonable antenna installation. The OTARD Rule includes such a process for Commission intervention to review and determine if a receiving antenna has been properly accommodated by local government and homeowner association or developer restrictive covenants.¹¹ If applied to amateur radio antennas, OTARD would allow at least a modest and straightforward Petition for Declaratory Ruling process before the Commission to determine the outcome of a particular amateur antenna in question. This, instead of what now often amounts to either very costly and lengthy legal action in state or federal courts or no antenna at all.

IV. Summary

8. Clearly, impediments to reasonable amateur antennas and amateur radio itself will remain irrespective of whatever is promulgated, if no process is added to permit competent, reasonable review of unresolved antenna disputes or that enables an enforcement process of citation followed by forfeiture, to assure compliance. Contrary to

¹¹ 47CFR1.4000(e)-(h).

what ARRL claims in its Comments, the result of the codified requirement of *reasonable accommodation*, by and large, has not been reasonable.

Respectfully Submitted this 17th day of May, 2012



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Certification/Testament of Service

This is to attest that on the 17th of May, 2012, the undersigned placed a true, signed copy of this Reply in the United States Mail, First Class Postage Paid, addressed to the location given in the Docket for the attorney of record as follows:

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By _____

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